

**Exhibit O**

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

DUNCAN K. ROBERTSON,

NO. 2:12-CV-02017-MJP

Plaintiff,

v.

NOTICE OF APPEAL –  
PLAINTIFF DUNCAN K.  
ROBERTSON’S NOTICE APPEAL  
TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH  
CIRCUIT

GMAC MORTGAGE, LLC, et. al.,

Defendants.

REPRESENTATION STATEMENT

1. Notice is hereby given that Duncan K. Robertson, (“Appellant”), plaintiff in the above-referenced civil case, hereby appeals to the United States Court of Appeals for the Ninth Circuit, pursuant to 28 U.S.C. §1291 and § 1292, from the following District Court Orders:

- (a) ***Order Denying Motion to Reconsider***, Docket No. 203, in which the district court affirmed Plaintiff’s lack of standing to bring claims, but refused the action requested, namely remand of the case to state court for lack of subject matter jurisdiction. This Order was entered on July 11, 2014. Exhibit A attached;

- (b) ***Order Granting Bank of New York Mellon Trust Company, N.A. Motion for Summary Judgment***, Dkt. 201 (Dismissing defendant; Robertson lacks standing). Entered May 28, 2014. Exhibit B attached;
- (c) ***Order Denying Motion to Vacate*** (all previous dismissals of defendants), Dkt. 150 (District court ruling that it need not follow state intermediate court rulings and that Plaintiff lacks standing to bring claims). Entered November 15, 2013. Exhibit C attached;
- (d) ***Order Granting Motions - Chase FRCP 12(b)(6) Motion to Dismiss and GMAC Defendants Motion for Summary Judgment***, Dkt. 149 (Dismissing multiple defendants because Roberson lacks standing to bring any of his Deeds of Trust Act related claims). Entered November 14, 2013. Exhibit D attached;
- (e) ***Order Granting First American Motion for Summary Judgment***, Dkt. 111. Entered on May 6, 2013. Exhibit E attached;
- (f) ***Order Denying Motion to Reconsider*** (of dismissal of LSI), Dkt. 103. Entered on April 11, 2013. Exhibit F attached;
- (g) ***Order Denying Motion to Remand (2<sup>nd</sup>)***, Docket No. 85 (denying motion in response to Defendants' second Notice of Removal). Entered in this case on February 20, 2013. Exhibit G attached;
- (h) ***Order Denying Motion to Remand (first) and Denying Motion For Proof of Authority*** (of attorney representation to consent to removal). Docket No. 82. Entered on February 19, 2013. Exhibit H attached;

(i) ***Order Granting LSI Title Agency, Inc. FRCP 12(b)(6) Motion to Dismiss  
for failure to state a claim and Denying Leave to Amend Complaint.*** Docket

No. 58. Entered on February 6, 2013. Exhibit I attached.

2. The Motion for Reconsideration, denied in the Order described in ¶ 1(a) *supra*, requesting a separate action to remand the entire case to state court, based upon order granting summary judgment (1(b) *supra*) and previous rulings of his lack of standing, to relieve Appellant from the judgment, was timely filed on June 6, 2014. Dkt. 202. See Fed. R. Civ. P. Rule 60(d). The Order *Denying* Reconsideration, Dkt. 203, was issued on July 11, 2014. This Notice of Appeal is being filed August 1, 2014, within the 30-day period required under FRAP Rules 4(a)(1)(A), 4(a)(4)(A).

3. Appeal is taken against all defendants to this case, including

GMAC Mortgage, LLC  
Executive Trustee Services, LLC  
Residential Funding Real Estate Holdings, LLC  
Residential Funding Company, LLC  
Residential Funding Corporation  
Homecomings Financial, LLC  
LSI Title Agency, Inc.  
Bank of New York Mellon Trust Company N.A. f/k/a  
Bank of New York Trust Company, N.A.  
JP Morgan Chase Bank, N.A.  
First American Title Insurance Company

4. On July 24, 2014 defendants JP Morgan Chase Bank, N.A. and Bank One, N.A. filed a *Motion for Final Judgment*, pursuant to Fed. R. Civ. P. Rule 54(b). Dkt. 204. That same day defendants First American Title Company, Bank of New York Mellon Trust Company, N.A. (“BNY”), and LSI Title Agency, Inc. joined in the motion. Dkt. Nos. 205, 206 and 207 respectively. The attorney claiming to represent BNY also represents GMAC

1 Mortgage, LLC; Executive Trustee Services, LLC; Residential Funding Real Estate Holdings,  
2 LLC; Residential Funding Company, LLC; Residential Funding Corporation; and  
3 Homecomings Financial, LLC. He announced that certain remaining claims against these  
4 defendants are stayed by the *In Re Rescap* bankruptcy proceedings in New York.<sup>1</sup> On August  
5 11, 2014 Robertson also joined in the Motion for Final Judgment, supporting the Motion and  
6 noting that disputes remain as to factual issues presented in the briefs of defendants. Dkt. 208.

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8 5. Notice of appeal is being filed at this time to establish Appellant's acting to timely  
9 appeal these Orders, and because the last two Orders of the Court, ¶ 1(a), (b), *supra*,  
10 effectively ended the litigation on the merits, leaving nothing more for the court to do but  
11 execute the judgment. Should the 9<sup>th</sup> Circuit Court of Appeals find that this Appeal is  
12 premature, it is requested that the date of this filing be appropriately amended, or in the  
13 alternate, that an extension of time to file be granted to file, if needed. Appellant also requests  
14 permission of the 9<sup>th</sup> Circuit to amend this appeal, if necessary, to include further orders of the  
15 district court once the district court rules on the *Motion for Final Judgment*.

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17 6. This appeal is also being brought at this time to preclude the possibility that in the  
18 event the district court denies the Motion for Final Judgment,<sup>2</sup> this case could be sent into a  
19 limbo state from which appeal could be foreclosed in perpetuity. This is because in its Order  
20 Granting Summary Judgment to BNY, Dkt. 201, the district court ruled, "This Court has  
21 already concluded that Plaintiff lacks standing to bring these DTA based claims." *Id.* at 6.

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<sup>1</sup> *In Re Rescap*, No. 12-12020 (Bnkr. S.D. New York)

<sup>2</sup> See FRAP Rule 4(a)(4)(A)(no tolling of time to file appeal for a Rule 54(b) motion).

1 Absent standing to bring bankruptcy stayed claims Robertson cannot bring claims before *any*  
2 federal court, including the *In Re Rescap* proceeding.<sup>3</sup>  
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5 DATED this 11<sup>th</sup> day of August, 2014.

6 Respectfully Submitted,

7 STAFNE TRUMBULL, LLC

8 /s/ Scott E. Stafne

9 Scott E. Stafne, WSBA# 6964

10 /s/ Dean Browning Webb

11 Dean Browning Webb, WSBA #10735

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24 <sup>3</sup> "A party that lacks standing to support jurisdiction in an Article III court also lacks standing for that claim to be  
25 adjudicated by a bankruptcy court." *Wells Fargo Bank, N.A. v. Stewart (In re Stewart)*, 647 F.3d 553, 557 (5th  
26 Cir. 2011).

## REPRESENTATION STATEMENT

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Defendant/Appellees -

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Executive Trustee Services, LLC;  
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Residential Funding Company, LLC;  
Residential Funding Corporation;  
Homecomings Financial, LLC  
Bank of New York Melon Trust Company, N.A.,  
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Respectfully Submitted this 11th day of August, 2014, by:

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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on August 11, 2014, I electronically filed the foregoing Notice  
5 of Appeal and Representation Statement with the Clerk of the Court using the CM/ECF  
6 system, which will send notification of such filing to the following:

7  
8 Fred B Burnside-  
9 Attorney for JP Morgan Chase Bank, N.A.  
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20 I further certify that all participants in the case are registered CM/ECF users and that service  
21 will be accomplished by the appellate CM/ECF system.

22 DATED this 11<sup>th</sup> day of August, 2014.

23  
24  
25 /s/ Dean Browning Webb  
26 Dean Browning Webb, WSBA #10735